



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: [REDACTED]

EAC 00 073 51527

Office: Vermont Service Center

Date:

NOV 29 2000

IN RE: Petitioner:
Beneficiary:

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(B)(ii)

IN BEHALF OF PETITIONER:

INSTRUCTIONS:


This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a native and citizen of Mexico who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(B)(ii), as the battered spouse of a lawful permanent resident of the United States.

The director determined that the petitioner failed to establish that she: (1) is a person of good moral character; and (2) is a person whose deportation (removal) would result in extreme hardship to herself, or to her children. The director, therefore, denied the petition.

On appeal, counsel states that it is their belief the Service erred in its determination that the petitioner was not of good moral character and that she failed to establish extreme hardship to herself or her children. She requests that the Service evaluate the evidence that was submitted in its totality and consider the underlying circumstances. Counsel submits additional evidence.

8 C.F.R. 204.2(c)(1) states, in pertinent parts, that:

(i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The petition, Form I-360, shows that the petitioner arrived in the United States in May 1996. However, her current immigration status or how she entered the United States was not shown. The petitioner married her lawful permanent resident spouse on July 23, 1999 at El Paso, Texas. On January 3, 2000, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her permanent resident spouse during the marriage.

8 C.F.R. 204.2(c)(1)(i)(F) requires the petitioner to establish that she is a person of good moral character. Pursuant to 8 C.F.R. 204.2(c)(2)(v), primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check for each locality or state in the United States in which the self-petitioner has resided for six or more months during the three-year period immediately preceding the filing of the petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self petition.

The director determined that the petitioner failed to establish that she is a person of good moral character based on her arrest for aggravated assault on her husband on June 14, 1999. He noted that the petitioner spent 16 days in the county jail until she was bonded out by her husband, and that the charge was subsequently dismissed because her husband requested that the charges be dismissed.

On appeal, counsel asserts that the Violence Against Women Act (VAWA) was enacted to protect battered spouses, and there is no provision of VAWA that says a woman must stand still and be beaten by her spouse. She further asserts that if a woman is brave enough to stand up to herself, that in itself does not make her any less a victim of domestic violence, nor is this evidence that the battered spouse is incapable of having good moral character. Citing Matter of B-, 11 I&N Dec. 611 (BIA 1943), which held that "good moral character does not mean moral excellence and that it is not destroyed by a single lapse," Counsel states that in this case, the petitioner has one arrest which did not result in a finding of guilt. She further states that in the petitioner's statement regarding the event that occurred on June 14, 1999, she admits that she and her spouse were fighting that day; however, it is clear from the statement that she did not attack her spouse.

Rather, the petitioner had been attacked by her spouse that day and brutally raped by him the night before, but the police took no action against her spouse.

8 C.F.R. 204.2(c)(1)(vii) provides, in part, that:

A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act....A self-petitioner will also be found to lack good moral character unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

Section 101(f) of the Act, 8 U.S.C. 1101(f), states, in pertinent part:

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be establish, is, or was--

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in paragraphs (2)(D), (6)(E), and (9)(A) of section 212(a) of this Act; or subparagraphs (A) and (B) of section 212(a)(2) and subparagraph (C) thereof of such section....if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period....

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.

Aggravated assault is a crime involving moral turpitude and such conviction would render the petitioner inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. 1182(a)(2)(A)(I). See Matter of Goodalle, 12 I&N Dec. 106 (BIA 1967); Matter of Baker, 15 I&N Dec. 50 (BIA 1974). The record, however, reflects that the petitioner was not convicted of this charge, but rather, it was dismissed on December 2, 1999. Nor is there evidence that the petitioner admitted to having committed the crime. She claims that during a fight, her spouse threatened to call the police to arrest her, and she took a knife to cut the phone cord.

The charge of aggravated assault, in this case, does not satisfy the grounds required for a finding of a lack of good moral character pursuant to section 101(f) of the Act, 8 U.S.C. 1101(f). The petitioner has, therefore, overcome this finding of the director pursuant to 8 C.F.R. 204.2(c)(1)(i)(F).

8 C.F.R. 204.2(c)(1)(i)(G) requires the petitioner to establish that her removal would result in extreme hardship to herself or to her child. 8 C.F.R. 204.2(c)(1)(viii) provides:

The Service will consider all credible evidence of extreme hardship submitted with a self-petition, including evidence of hardship arising from circumstances surrounding the abuse. The extreme hardship claim will be evaluated on a case-by-case basis after a review of the evidence in the case. Self-petitioners are encouraged to cite and document all applicable factors, since there is no guarantee that a particular reason or reasons will result in a finding that deportation (removal) would cause extreme hardship. Hardship to persons other than the self-petitioner or the self-petitioner's child cannot be considered in determining whether a self-petitioning spouse's deportation (removal) would cause extreme hardship.

To determine whether the petitioner's removal from the United States would lead to extreme hardship, consideration must be given to the fact that much of the case law in this area was developed in the context of applications for relief in deportation or removal proceedings against aliens already found deportable by an immigration judge. Those stricter standards and presumptions cannot be applied identically in the context of an affirmative application for benefits outside the deportation or removal context.

Cancellation of removal (suspension) requires a showing of "exceptional and extremely unusual hardship" in all cases involving aliens who would previously have applied for suspension of deportation under section 240A of the Act. Significantly, however, Congress left intact the requirement that battered spouses and children show only "extreme hardship" before cancellation of removal can be granted in their cases. Congress thus intended to

apply a lower standard to battered spouses and children. Those stricter standards and presumptions cannot be applied identically in the context of an affirmative application for benefits outside the deportation or removal context.

Because the petitioner furnished no evidence to establish that her removal to Mexico would result in extreme hardship to herself or to her children, the petitioner was requested on February 18, 2000 to submit additional evidence. The director listed examples of factors to be considered in determining whether her removal from the United States would result in extreme hardship. No additional evidence was furnished, nor did the petitioner address the director's request for evidence.

On appeal, counsel asserts that the petitioner submitted with the Form I-360 a copy of the Protective Order that was granted to her and against her spouse. She states that the petitioner has been the subject of repeated domestic violence and sexual abuse at the hands of her spouse, and she has actively sought assistance from the courts and police. The protective order affords the applicant a sense of security as long as she resides in El Paso County. The police had been called to enforce the temporary protective order, and her spouse was charged with violation of the order and sentenced to eleven months of probation on January 14, 2000. Counsel asserts that the petitioner has stated that she is afraid of her spouse and what he will do to her family, and that her spouse has gone to her family in Mexico and threatened her and the family. She states that the protective order will serve no purpose in Mexico. If the petitioner is removed to Mexico, her spouse, who is a lawful permanent resident, can cross into Mexico at will. Counsel further states that in addition, the protective order requires that the petitioner receive spousal support, and because the support order will be unenforceable in a Mexican court, the petitioner will have no access to the funds in Mexico, and this is an additional hardship the family will face. Counsel indicates that the petitioner and her children attend counseling at the El Paso Shelter for Battered Women; the petitioner does not have health insurance either in the United States or Mexico; she is unemployed and must raise her three children; and if the petitioner is removed to Mexico, there is no certainty that she could find employment to support her three children and herself.

The petitioner, on appeal, states that her spouse wanted to take her children away from her. She further states that her spouse would go to Mexico where her family lives to try and find out where she is, lie to them about her situation, take her children away from her, and threaten her family because they would not tell him where she is. In a statement furnished with the self-petition, the petitioner states that her spouse "went to my children's school and pretended to be their grandfather, but since he looked suspicious they did not allow for him to see the children."

The record reflects that the petitioner has three minor children, one a United States citizen. Her request for a protective order

was granted until January 2002, and that her spouse was ordered to pay \$400 monthly spousal support. The petitioner submits a letter from El Paso Shelter for Battered Women indicting that she is presently receiving counseling service.

Economic detriment alone is insufficient to support a finding of extreme hardship. See Palmer v. INS, 4 F.3d 482, 488 (7th Cir. 1993); Mejia-Carrillo v. United States INS, 656 F.2d 520, 522 (9th Cir. 1981). However, it is a significant factor which must be weighed in evaluating the totality of the petitioner's situation. The petitioner's concern for her inability to secure adequate employment in her home country is relevant. The record establishes that the petitioner was the subject of extreme cruelty perpetrated by her lawful permanent resident spouse, and that the consequences of the abuse contribute to the extreme hardship claimed by the petitioner. Her claim of fear for her personal safety and the safety of her children if she were to return to Mexico is well founded. As argued by counsel, if the petitioner is removed to Mexico, her spouse, who is a lawful permanent resident, can cross into Mexico at will and continue the abuse on the petitioner as the protective order will be unenforceable in Mexico. Counsel further states that in addition, the protective order requires that the petitioner receive spousal support, and because the support order will be unenforceable in a Mexican court, the petitioner will have no access to the funds in Mexico, and this is an additional hardship the family will face.

Accordingly, it is concluded that the petitioner has established that her removal from the United States would result in extreme hardship to herself and to her children pursuant to 8 C.F.R. 204.2(c)(1)(i)(G).

The director did not find the petitioner ineligible under any other provisions of 8 C.F.R. 204.2(c).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has met that burden. Consequently, the decision of the director will be withdrawn, the appeal will be sustained and the petition will be approved.

ORDER: The decision of the director dated June 16, 2000 is withdrawn. The appeal is sustained and the petition is approved.